IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 06.01.2006
CORAM:
THE HON'BLE MR. JUSTICE P.JYOTHIMANI
W.P. No. 12972 of 2001
and
W.P.M.P.Nos.34093 of 2002 and 46949 of 2004

K.Kamatchi

. Petitioner

-vs-

1. The Managing Director,
Tamil Nadu State Transport Corporation.
Madurai (Division IV) Ltd.
Bye-pass Road,
Collectorate Post,
Dindigul 624 004.

2. The Tamil Nadu State Transport Corporation Ltd.,
Kumbam Branch, Kumbam.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus, calling for the records of the first respondent herein in reference No.5-Admn.4941 dated 15.03.2001, quash the same and consequently direct the first respondent herein to provide alternate employment to the petitioner in terms of Sec.82 and 83 of the Memorandum of Settlement dated 28.09.1995 under Sec.12(3) of the Industrial Dispute Act, 1947 with continuity of service with effect from the date of discharge on medical grounds and grant the petitioner relief of back wages, increments, all service benefits and attendant benefits.

For Petitioner : Mr. AR.L. Sundaresan
For Respondents : Mr. S. Jayaraman

WEB COPY

O R D E R

This writ petition is filed challenging the order of the first respondent dated 15.03.2001 and also for directing the first respondent to provide alternative employment to the petitioner in terms of Sections 82 and 83 of the Memorandum of Settlement dated 28.09.1995 under

https://hcservices.ecourts.gov.in/hcservices/

Section 12(3) of the Industrial Disputes Act, 1947 with continuity of service etc.

2. The petitioner was appointed as a Conductor in Rani Mangammal Transport Corporation on 01.09.1997 and the said Corporation has now merged with the Tamil Nadu State Transport Corporation Limited, namely the second respondent. Though he was appointed as a Conductor, he was allotted to work as a Cashier along with two other persons. While so, on 28.01.1998, when travelling from the Head Office at Dindigul to Dindigul City, he incurred physical disability as a result of an accident and on the ground of the said major injury, he was hospitalised. On his appearing before the Regional Medical Board, he was certified that he was invalid for the post of a Conductor. The first respondent, ultimately, by order dated 05.04.2004, has discharged the petitioner from service on the ground of medical disability. It was aggrieved against the said order, he filed W.P.No.2933 of 2000, which was dismissed by an order dated 16.06.2000 on the basis that the discharge order was not challenged. That writ petition was considered on the pretext that the discharge was on disciplinary grounds. The writ appeal filed against the said order in W.A. No.1426 of 2000 was also dismissed by a Division Bench on 07.09.2000. Thereafter, the petitioner made a representation to the first respondent requesting him to give an alternative employment in terms of Rules 82 and 83 of the Memorandum of Settlement, which was entered into under Section 12(3) of the Industrial Disputes Act. Since there was no reply, he filed a writ petition in W.P. No.151 of 2001, in which there was a direction by this Court to consider the representation of the petitioner dated 28.10.2000 and pass orders and accordingly, an order was passed on the petitioner's representation on 01.02.2001. It is pursuant to the order of this Court, the impugned order is passed by the first respondent stating that since the petitioner was discharged on medical grounds, he is kept in the waiting list of similar candidates in which he is at Sl. No.5, and as and when his turn comes, he will be considered. It is this order which is challenged in the present writ petition.

3. Mr. AR.L. Sundaresan, learned counsel for the petitioner would state that even though the prayer in the writ petition is to provide alternative employment to the petitioner in terms of Section 82 and 83 of the Memorandum of Settlement dated 28.09.1995 under Section 12(3) of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Industrial Disputes Act, 1947, by virtue of the subsequent enactment of the Central Act on the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (Act 1 of 1996), the petitioner will be entitled for some other employment, as it has also been held by the Supreme Court subsequently while interpreting the said provision. The learned counsel for the petitioner would state that as per Section 2(k) of the said Act, which defines 'establishment', the second respondent establishment would come within the purview of the same. The Act came into existence on 01.01.1996. According to the learned counsel for the petitioner, after the Act has come into existence, by virtue of the provisions of Section 47(1) of the Act, no establishment shall dispense with, or reduce in rank, the service of any employee, who acquires a disability during his service. The first proviso to the said Section states that if an employee, after acquiring disability is not suitable for the post he was holding at the time of his acquiring the disability, he could be shifted to some other post with the same pay scale and service benefits. The second proviso to the Section states that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation.

4. This Act came to be interpreted by the Supreme Court in Kunal Singh vs. Union of India & another (JT 2003 (2) SC 132), wherein by interpreting Section 47 of the Act, the Supreme Court has laid down the law as follows :

> "Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during his service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

Apart from the above judgment of the Supreme Court, learned counsel for the petitioner has taken me through some of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

judgments of our High Court. One such judgment rendered in W.A. No.680 of 2005 is reported on the Internet in Metropolitan Transport Corporation Limited vs. K. Ravichandran (CDJ 2005 MHC 851), wherein a Division Bench, while holding that the 1995 Act, which is different from the Workmen's Compensation Act, is a piece of welfare legislation and it has to be liberally construed, giving a purposive interpretation. The Division Bench has also observed that the object of the Act is to mandate the Directive Principles of State Policy as enshrined in Part IV of the Constitution of India. In yet another judgment rendered in W.A. No.1475 of 2004 dated 07.04.2005 reported on the Internet in General Manager vs. A. John Peter (CDJ 2005 MHC 834), another Division Bench of this Court has given the same interpretation to Section 47 of the Act. Suffice it to say that the Supreme Court has clearly laid down the law as far as Section 47 is concerned. In the present case, while admittedly the petitioner was discharged on medical grounds on 05.04.2004, by which time the Act was in existence and operative, automatically, by virtue of Section 47(1) of the Act, the petitioner is entitled for the job in the same cadre in which he was working at the time of acquiring the disability, or in the absence of such post, in a supernumerary post, in the same scale of pay.

5. Mr. S. Jayaraman, learned counsel for the respondents/Corporation would urge that the petitioner has earlier approached this Court and even in the present case, when his claim itself is for the purpose of enforcing Rules 82 and 83 of the Memorandum of Settlement, it is not open for him now to claim a better benefit. He further argues that the Corporation is not at all denying his right of employment. The Corporation further states that the petitioner is kept in the waiting list and as an when vacancy arises, he will be definitely offered the same.

6. As stated by the learned counsel, the discharge of the petitioner was on medical grounds, in which case, as stated above, Act 1 of 1996 will apply. Therefore, there is no doubt at all to arrive at a conclusion that on the basis of Sub-section (1) of Section 47 of the Act, the petitioner is entitled for the benefits as said therein. Since this is a legal issue, even though the relief is not asked for by raising this issue as a ground in the writ petition, this Court is inclined to consider the legal issue and on that basis, the order is passed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. With the result, the impugned order is quashed and the respondents are directed to pass orders and confer benefits on the petitioner as per the provisions of Act 1 of 1996, specifically as per Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (Act 1 of 1996). The respondents are directed to comply with the above order within a period of six weeks from the date of receipt of a copy of this order. With this observation, the writ petition is disposed of. However, there will be no order as to costs. Consequently the connected W.P.M.Ps are closed.

Gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Managing Director,
   Tamil Nadu State Transport Corporation.
   Madurai (Division IV) Ltd.
   Bye-pass Road,
   Collectorate Post,
   Dindigul 624 004.

2. The Tamil Nadu State Transport Corporation Ltd.,
   Kumbam Branch, Kumbam.

+ one cc to Mr. S. Jayaraman, Advocate sr no. 1223

NM(17.01.2006)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/